

USAWC STRATEGY RESEARCH PROJECT

THE LEGAL FRAMEWORK OF INTERVENTION
FORCES IN AFRICA CASE STUDY- LESOTHO

by

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ABSTRACT

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The Mountain Kingdom of Lesotho is situated in Southern Africa, and completely surrounded by the Republic of South Africa. Lesotho gained independence from United Kingdom on the 4 October 1966, and has since been known for its turbulent political history. In 1986, there was a military coup, which brought Major General Lekhanya into power. The constitutional government was restored in 1993, after 23 years of Military rule. Following this general elections, the Basutoland Congress Party of Prime Minister Ntsu Mokhehle came into power with complete control of national Assembly. There was some political unrest with the opposition claiming political election fraud, and calling for the King to intervene. In 1994, he suspended parliament and installed a ruling council. This was, however not supported by the majority of Basotho who took to the streets. A memorandum of understanding between the King and the Prime Minister, known as the TROIKA Agreement was brokered by South Africa, Botswana, and Zimbabwe, which called for peace and the restoration of the King Moshoeshe¹, who had long been deposed by the military regime.

The 1998 crisis was similar to that of the 1993/94 post-electoral period. In both cases, opposition party members charged political fraud, suborned army supporters, sought the King's intervention, and effectively rendered the elected government ineffective. In the 1998 upheavals, however, the King did not get involved; it was some members of the army who did.

Based on the 1994 memorandum of understanding, the Prime Minister, Mr Mosisili called for Southern African Development Community (SADC) to intervene militarily to stabilize the situation. It is the using of the 1994 agreement which put the SADC intervention force on the spotlight; did they have the mandate in 1998 to intervene? This monograph shall explore the relevant statutes to find out whether SADC forces were properly mandated to enter Lesotho. Any lessons learned from this intervention.

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PREFACE

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The author would like to thank Brigadier Tiroyamodimo of the Botswana Defence Force; Nonofa Garegope of Botswana; Ambassador, Botswana Mission to the United Nations for assisting with my research. My special thanks to Professor Kent Hughes Butts for advising me through this project.

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THE LEGAL FRAMEWORK OF INTERVENTION FORCES IN AFRICA CASE STUDY- LESOTHO

'INTERVENTION' has been defined as, 'to interfere with force, or a threat of force between two disputing parties': and 'peace maker' defined as 'a person, group, or nation that attempts to make peace'.

- Webster's dictionary, fourth edition

On the 22nd September, 1998, the Southern African Development Community (SADC) forces of Botswana and South Africa entered the Mountain Kingdom of Lesotho at the behest of the Lesotho Government under the Troika Agreement to disarm the Lesotho Defence Force (LDF) rebel soldiers who were mutinying, and to bring stability and peace to a country ravaged by more than six weeks of political turmoil. This was SADC's first official military intervention operation, codenamed 'Operation Boleas' into a member state. The mission of the combined SADC Task force was to intervene militarily in Lesotho to prevent any further anarchy and to create a stable environment for the restoration of law and order.¹

In this operation, the battle concept was described as the deployment of forces in order to locate and identify destabilizer resources, to disarm, and contain them and to strike where applicable with necessary force to eliminate the threat. The desired end results was to create a stable environment in Lesotho; and to restore law and order to enable negotiations to take place between the political parties in Lesotho, said Colonel Robbie Hartsliet.² All these, however, had to be done within the applicable principles of international law as prescribed under the United Nations Charter, and the SADC's applicable Protocols.

A lot of questions have been asked about the legality of this intervention. This monograph will address these questions by relating the facts to the mission, and also by relating them to the relevant Articles of the United Nations Charter, AU Charter, and the SADC Protocols.

The 1994 SADC Troika Agreement gave the countries of Botswana, South Africa, and Zimbabwe the mandate to deal with any internal political instability in Lesotho, and to oversee future peace efforts in that country. When political disagreements surfaced again in the 1998 general elections, SADC called upon the three countries to deal with the problem under the same Troika Agreement, and effectively conclude the job under the confines of the region's prescribed protocols. The Troika Member States applied diplomatic means by instituting a judicial commission to look into the grievances, and when that could not bring about the required results, SADC applied more pressure by sending in an intervention force to quell down the rebellious situation.

The United Nations recognizes the need by international member states to broker peace amongst them, and where it appears that there is a threat to the peace within the region, member states have the option to take appropriate measures to bring about the stability.

Article 1 of the United Nations Charter says the purpose of the United Nations is to maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.³

This is achieved by the United Nations under Chapter VI of the Charter known as Pacific Settlement of Disputes. When this fails, Chapter VII is usually applied. This, the United Nations carries out its mandate under Chapter VII, Article 52 which authorize the member states to form Regional Organizations and Sub-regional Organizations to take action with respect to threats to peace, breaches of the peace, and acts of aggression amongst member states. The Organization of African Unity's SADC Sub region invoked its Organ on Politics, Defence, and Security Cooperation dealing with threats to peace and peaceful co-existence by members to enter Lesotho in 1998 to bring about stability in that country. It must however be noted that, whereas the African Charter encourage non-interference in the internal affairs of member states, the Sub regions have tendered to move away from that analogy, preferring instead to actively get involved in situations which appear to hamper peaceful co-existence of member states in their regions as was evident by a more interventionist posture adopted by Africa's new Leaders, especially the Yoweri Museveni, Paul Kagame, and Blaise Compaore, and recently by Economic Community of West African States (ECOWAS)⁴. Mr Mandela put it bluntly when he said to the OAU meeting in Ouagadougou in 1998 that Africa has a right and duty to intervene to root out tyranny. He said they must accept that they cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereign boundaries, people were being slaughtered to protect tyranny.⁵

As one of its mandate the SADC Organ resolved to deal with any conflict which threatened peace and security in the region or in a signatory, and an intra-states conflict, which would include a large-scale violence between sections of the population or between the State and sections of the population to include a military coup or other threat to legitimate authority of a state, and/or a condition of a civil war or insurgency.⁶ These conditions were present in the Lesotho case.

HISTORICAL BACKGROUND

In order to understand the subject matter of our discussion, we need to take a look at the background information, or history of Lesotho that led to the intervention.

The Kingdom of Lesotho, formerly known as Basutoland, became a British protectorate in 1868, at the request of the Basotho paramount chief, Moshoeshe I, in the face of the Boer expansionism.⁷ Basutoland was annexed to Cape Colony (now part of South Africa) in 1871, but became a separate British colony in 1884, and was administered as one of the high commission territories in southern Africa. Unlike its sister colonies of Bechuanaland, now Botswana, and Swaziland, Basutoland is entirely surrounded by South African territory. Modern party politics began in 1952 with the founding of the Basutoland Congress Party (BCP), renamed the Basotho Congress Party in 1966) by Dr Ntsu Mokhehle. The BCP won decisively in elections to the Legislative Council, held in 1960.⁸

The Basutoland's first general election, held on the basis of universal adult suffrage, took place in April 1965. The Basutoland National Party, (renamed Basotho National Party at independence), won the majority seats in parliament. Following the election, Moshoeshe II, the paramount chief, was recognized as King. The BNP's leader, Chief Leabua Jonathan, became the first Prime Minister. Basutoland thus became independent, as the Kingdom of Lesotho on the 4 October 1966. In 1967, the executive power was transferred from the King to the Prime Minister. In the election held in 1970, BCP appeared to have won a majority of seats in the National Assembly. But Chief Jonathan declared a state of emergency, suspended the constitution and arrested Mokhehle and other leaders of the BCP. The election was annulled, and the country effectively passed under the Prime Minister's control. King Moshoeshe went briefly into exile, but returned later after agreeing to take no part in politics.⁹

The Lesotho politics virtually went into turmoil during this period. The Lesotho Liberation Army, (LLA) was born during this period. Relations with South Africa went sour, with the latter threatening sanctions. Lesotho in return accused South Africa of supporting the LLA rebels, and refused to sign a joint non-aggression pact. Lesotho cancelled the elections scheduled for 1985, and in January 1986, South Africa blockaded its border with Lesotho, impeding access to vital supplies of food and fuel. On 15 January troops of the Lesotho paramilitary force, led by Major General Justin Lekhanya, surrounded government buildings. A few days later, Lekhanya having returned from security consultations in South Africa, together with Maj Gen Molapo of the security forces, and S Matela, the chief of police, deposed the government of Chief Leabua Jonathan.¹⁰

The new regime established a Military Council, headed by General Lekhanya. The national Assembly was dissolved, and all executive powers were vested in the King, who acted on the advice of the Military Council. South Africa lifted the blockade. The opposition initially welcomed the take over, although the Mokhehle wing of the BCP demanded the immediate restoration of the 1966 constitution, the integration of the LLA into Lesotho's armed forces, and the holding of elections within 6 months. However, all formal political activity was suspended by the Military Council. In 1988, five members of the opposition parties appealed to the Organization of African Unity (now the African Union), the Commonwealth, and the South African Government to restore civilian rule. Mokhehle was allowed to return to Lesotho after 14 years in exile to take part in peace talks. In 1990, a rift developed between Gen Lekhanya and the King, after the latter refused to dismiss three members of the Military Council. The King's legislative and executive powers were suspended. The King went into exile to UK. The King's eldest son, Bereng Seeisa, was installed as King having undertaken not to involve himself in politics.¹¹

In 1991, Gen Lekhanya was removed as Chairman of the Military Council in yet another coup led by Colonel (later Maj. Gen.) Elias Pitsoane Ramaema, a member of the Military Council. He repealed the law banning political activities, recalled the King from UK in 1992, and the general elections finally returned to Lesotho in 1993. The BCP of Ntsu Mokhehle were swept into power after winning all 65 seats, and sworn in April 1993 as the Prime Minister. He did not have it easy thereafter either. There was a military coup attempt after he tried to place the armed forces under an LLA officer. Opposition parties also did not accept the general election results, despite their being declared fair by international observers. Also in 1994, the deputy Prime Minister was shot and killed during an abduction attempt by disaffected troops, who also briefly detained four other ministers. This incident sparked some disturbances. Prime Minister Mokhehle appointed a commission of inquiry into circumstances surrounding the dethronement of former King Moshoeshoe II in 1990.¹²

However, having petitioned the High Court to abolish the commission on the grounds of bias on the part of its members, King Letsie dissolved parliament, dismissed the Mokhehle government and suspended sections of the Constitution, citing 'popular dissatisfaction' with the BCP administration. The big question, which still lingers even today is, what was this, a Palace coup? It certainly looked like one, if not one. A provisional government was to be established, pending a general election, which was to be organized by an independent commission. In August, four people were killed during clashes between supporters of the deposed government, and the army and police forces, which largely supported Letsie's measures.¹³

A prominent human rights lawyer, Hae Phoofolo, was appointed Chairman of the transitional Council of Ministers, and announced that his primary concern was to amend the Constitution to enable the restoration of Moshoeshe as Monarch. In the meantime, Letsie acted as legislative and Head of State. The constitutional government was widely condemned outside Lesotho. The Presidents of Botswana, South Africa, and Zimbabwe led diplomatic efforts to restore the elected Government, supported by the OAU and the Commonwealth.

¹⁴Some countries threatened sanctions; the United States withdrew financial assistance. King Letsie and Mokhehle attended negotiations in Pretoria in late August, at which Letsie was urged to reinstate all elected institutions. In September 1994, King Letsie and Mokhehle signed an agreement, guaranteed by Botswana, South Africa, and Zimbabwe, providing for the restoration of Moshoeshe as reigning monarch, and for the immediate restitution of the elected organs of government; the commission of inquiry into Moshoeshe's dethronement was to be abandoned; persons involved in the 'royal coup' were to be immune from the prosecution; the political neutrality of the armed forces and public service was to be guaranteed, and consultations were to be undertaken with the expressed aim of broadening the democratic process. This came to be known as the Troika Agreement¹⁵. On 25 January 1995 Moshoeshe II, who undertook not to intervene in politics, was restored to the throne, following the voluntary abdication of Letsie III, who took the title of Crown Prince. When King Moshoeshe was killed in a motor accident in January 1996, the Crown Prince was formerly elected to succeed his father and returned to the throne, resuming the title King Letsie III. In March 1997, Mokhehle announced his intention to retire from politics prior to the 1998 elections, citing ill health and old age. However, in mid June 1997, following protracted struggle between party rivals for the control of the party, Mokhehle resigned from the BCP and, with the support of the majority of BCP members in the National Assembly, formed a new political party, the Lesotho Congress for Democracy (LCD), to which he transferred power. Opposition leaders denounced the move as a political coup, declaring that Mokhehle should have resigned as Prime Minister, sought dissolution of the National Assembly, and held new elections. The LCD denied any contravention of the Constitution, as the Prime Minister was supported by the majority of the National Assembly. At the LCD's annual conference held in January 1998, Mokhehle resigned as leader, and was made honorary life President of the party; (he died in 1999). In February 1998, Bethuel Phakalitha Mosisili, the Deputy Prime Minister, was elected to replace him as party leader.¹⁶

This in short, is how events unfolded prior to the bigger events of 1998, which lead to SADC intervention.

ISSUES AFFECTING STABILITY IN LESOTHO

ELECTIONS

There are a numbers of issues which have contributed to the unstable conditions in the Kingdom of Lesotho; amongst those noticeable is that country's electoral process. Ever since the country became independent in 1966, a number of election disruptions have taken place, with serious consequences to that country's political stability.¹⁷

The first general elections, held on the basis of universal adult suffrage took place in April 1965. They were convincingly won by the Basutoland National Party under the leadership of Chief Leabua Jonathan, who went on to become the country's first Prime Minister; Basutoland became an independent Lesotho on the 4 October 1966. The first election seems to have gone well without any problems at all.¹⁸

The next general elections were held in January 1970. In this election, the Basotho Congress Party of Ntsu Mokhehle appeared to have won the majority of seats in the National Assembly. Chief Leabua Jonathan declared a state emergency, suspended the constitution, arrested Mokhehle, and annulled the results; he literally usurped power from the rightly elected people. This was the beginning of troubles for the tiny Mountain Kingdom of Lesotho. There was never to be any elections in Lesotho till twenty three years later, 27 March 1993.¹⁹

The 1993 election saw the Bosotho Congress for Democracy led by Ntsu Mokhehle swept back to power; Mokhehle was sworn in as Prime Minister on the 2 April 1993, and King Letsie swore allegiance to the new Constitution. However, trouble started brewing when opposition parties would not accept the results of the elections, claiming political fraud. Politically unfavorable events began to engulf the country, and in August 1994 King Letsie, having petitioned the High Court to abolish the commission instituted by Mokhehle to look into the circumstances under which King Moshoeshoe was dethroned, claiming bias on part of the commissioners, dissolved parliament, dismissed the Mokhehle government, and suspended parts of the Constitution; he set his provisional government; yet another failed general elections in Lesotho, this time by means of a 'royal coup'.²⁰

It took the efforts of the Presidents of Botswana, South Africa, and Zimbabwe to bring normality into Lesotho by leading diplomatic persuasion to restore the elected government. After these negotiations, an agreement was signed between King Letsie and Mokhehle, guaranteed by the three countries of Botswana, South Africa, and Zimbabwe providing for the restoration of King Moshoeshoe, and everything back to its 1993 election normality. This is what actually came to be known as the Troika Agreement, which we shall here more of, in the coming

submissions. The stage was therefore, set for the next elections scheduled for 1998. However, in June 1997, Mokhehle announced his intention to retire from active politics due to old age and ill health. This brought his party into turmoil, with rival party members fighting for positions. He broke away from the BCP with majority of members to form the Lesotho Congress for Democracy. He transferred power from BCP to LCD, which was condemned by other opposition parties as a political coup.²¹

The LCD contested the May 1998 general elections under the leadership of their new Leader, Bethuen Pakalitha Mosisili; they won 78 of the 80 seats on offer; BCP won one seat, and the other remained vacant due to the death of one of the contestants. Prior to the elections, some opposition parties had already unsuccessfully submitted an application to the high Court claiming that they were not given enough time by the independent electoral Commission. This was yet another trouble indicator by the opposition. Mosisili was elected Prime Minister by the National Assembly, and new cabinet sworn in by June 1998. In July, anti government protests broke in the capital, Maseru. In August, crowds besieged the royal palace and demanded that the King exercise his power to annul the elections, and appoint a government of national unity. The King, however, declined to act. Protests escalated in Maseru, prompting SADC under the leadership of South Africa to intervene. A commission was appointed under Justice Pius Langa, to investigate the allegations of electoral fraud. The commission findings were delayed, fuelling speculations that indeed the elections were rigged. When it finally did come in September, the situation had badly deteriorated. Some elements within the Lesotho Defence Force (LDF), had openly declared their support for the opposition, and juniors officers had arrested, jailed, and forced some senior officers to flee to South Africa.²²

Prime Minister Mosisili, fearing a possible collapse of law and order, and an imminent military coup, sought assistance from other SADC countries. Late September, SADC forces entered Maseru in an intervention operation code named 'Operation Boleas'.²³

MILITARY INFLUENCE IN LESOTHO POLITICS

The history of Lesotho demonstrates that since independence in 1966, the security forces have been involved one way or the other, in the electoral political disturbance in that country. This is not a good sign at all in a country perceived to be democratic. There are a number of reasons attributable to this; the highly politicized nature of the Lesotho Defence Force, and the lack of a proper Code of Conduct document for a long time. It was not until 1996, when a team of military lawyers from Botswana and Zimbabwe drafted the Lesotho Defence Force Act, and its Regulations, that the security forces had a document regulating their conduct.

The 1970 elections saw a coup attempt, after Chief Leabua Jonathan annulled the elections believed to have won by Basotho Congress Party. On 15 January 1986, troops of Lesotho paramilitary, led by Major General J. Lekhanya surrounded government buildings, and five days later toppled Chief Jonathan's government. The General established a Military Council, which he headed himself. Yet on the 30 April 1991, another coup took place; General Lekhanya was removed from office by Col (later Major General) Elias Ramaema. In 1993, there was yet another attempted military coup by about 50 junior military officers; this coup was put down by forces loyal to the government, but not before the Deputy Prime Minister was shot and killed by rebel soldiers in an abduction bid. The 1998 general elections were not spared either, as some junior LDF officers were again at the forefront instigating another coup in support of the opposition. At this stage, one would be tempted to say that the word military coup was becoming synonymous with general elections in Lesotho.²⁴

THE POWERS OF THE KING AND THE PRIME MINISTER

The constitution of Lesotho, Order No 5 of 1993 which came into effect on April 2, 1993, consisting of 15 Chapters, recognizes the King as Constitutional Head of the Mountain Kingdom of Lesotho, and shall hold office of King. As head of the constitutional Monarch, he becomes the Commander-in- Chief of the security forces of Lesotho.²⁵

The Prime Minister Designate is appointed in accordance with section 4 of the Lesotho Constitution (Commencement) Order of 1993, and done under Section 87(2) of the Constitution. Section 87(2) of the Constitution of Lesotho provides that the King shall appoint as Prime Minister the member of the National Assembly who appears to the Council of State to be the Leader of the political party or coalition of political parties that will command the support of the majority of the members in the National Assembly. In this case, Prime Minister Mosisili, as the majority leader in the National Assembly, was appointed by the King to head the Lesotho government under Lesotho Congress for Democracy. The Prime Minister, as head of government, becomes Chairman of the Defence Commission in Lesotho.²⁶

Section 145(1) of Lesotho Constitution provides that there shall be a Defence Commission which shall consist of; the Prime Minister as Chairman; the Commander of the defence Force; the Commissioner of Police; the Director of the National Security Service; and their Deputies. S145(2) says the Commission shall be responsible for the appointment, discipline and removal of members of the Defence Force, members of the Police Force, and members of the Prison Service. This means that no one else has the power to remove any member of the above security services, but the Commission itself.²⁷

Thus, when the junior officers on the 12 September 1998, arrested, jailed, and forced the Lesotho Defence Force Commander and his other officers to resign, they were acting in violation and contravention of the Lesotho Constitution, and this could not be tolerated in a democratic country.

The Prime Minister, as head of Government, and Security Forces, has all the right to call for help and assistance if he feels that his authority is being undermined by those who are supposed to be upholding it. Under normal circumstances, he should use his State machinery to bring law and order in the country, but where it appears the state apparatus have collapsed, he has the right to seek for help from elsewhere, and in this instance, he rightly looked up to SADC for help.

THE TROIKA AGREEMENT

The mandate given to the countries of Botswana, South Africa, and Zimbabwe to broker and oversee peace in Lesotho after the King had usurped power from a constitutionally elected Government in 1994 was called the Troika Agreement. It is the same mandate that the Prime Minister Pakalitha Mosisili relied upon in September 1998, when his authority was being undermined by those bent on bringing him down. Prime Minister Mosisili, fearing a possible collapse of law and order, and an imminent military coup, sought assistance from his SADC counterparts in September 1998 to militarily intervene in his country.²⁸

These are the events as they unfolded, that led to the Prime Minister calling for help, and South Africa and Botswana answering that call. In May 1998, the Lesotho Congress for Democracy party won all seats but one in Parliament in the national elections held in Lesotho. Immediately thereafter, opposition parties alleging fraud, challenged the elections results through the Courts, and by holding protests outside the Palace of King Letsie III. In August and September, opposition supporters, as well as some Government supporters, set up impromptu roadblocks paralyzing business in the Capital, Maseru. Initially, the Army and the Police did not intervene, but in August and September, there were sporadic armed clashes involving pro-and anti-government supporters, and sections of the police and the army, as well as targeted attacks on members of both main political groupings. At least five people were killed and scores others injured.²⁹

A commission chaired by a South African Constitutional Court Judge (Langa Commission), tasked to look into the running of the elections concluded in its September report that, notwithstanding some irregularities, the results were valid. This incensed opposition members and their supporters. Then on the September 11 1998, some army junior officers

detained more than 20 of their senior officers and held some government Ministers in their homes. The officers were released after the intervention of South African negotiators.³⁰ On the 12 September, the National Lesotho Radio reports that the Army Commander, Lieutenant General Makhula Mosakeng, has resigned with about 20 other officers. The radio says it is an 'internal military affair', but Diplomatic sources say General Mosakeng is under house arrest. Mean while the opposition supporters had continued their camping outside the Palace of King Letsie III, and the army has had a collective crisis of conscience over how to deal with them, as reported by BBC News.³¹

On the 13 September, the South African Defence Minister, Joe Modise, made an emergency visit to Lesotho in a bid to resolve an army mutiny by junior officers who were said to be sympathetic to opposition groups. Mr Modise went straight into talks with the Prime Minister, Pakalitha Mosisili and other ministers. They were expected to be joined by the newly –appointed Army Commander, Brigadier Anthony Thibeli, and his sacked predecessor, General Mosakeng.³² This was the beginning of negotiation diplomacy to try and solve the crises in a peaceful means in accordance with the United Nations Charter, the Charter of the Organization of African Unity, and indeed the Southern African Development Community Protocols on Politics, Defence, and Security Cooperation as is a requirement.

Then on the 14 September, the South African Defence Minister, Joe Modise again completed talks with rival army factions in Lesotho in yet another effort to calm the situation following an attempted insurrection by junior officers. 'He was due to fly back to Johannesburg to brief South Africa's President, Nelson Mandela that Monday evening', the South African Press Association news agency reported. The Defence Minister has held talks with both Lesotho Government Officials and members of the Lesotho Defence Force on stabilizing the situation.³³

On the 16 September, it was reported that a Coup was 'in the offing' in Lesotho. A coup is actually brewing in the tiny African Kingdom of Lesotho, the country's Foreign Minister Tom Thabane has warned after protestors blockaded government buildings. It is reported that "protestors had also locked the gates of Parliament and warned anyone tempering with the lock, they did so at their peril", the South African Press Association said.³⁴

A western Diplomat in Maseru said Government had lost control of the situation, "Things have gone so far that something must happen in the next 48 hours", he added. "If coup means change of government by unconstitutional means, then that is not here yet, but things are so serious that severe decisions have to be taken". The Diplomat said the government did not have adequate control over the army to use it to regain control, and could be forced to resign.³⁵

This was a very serious and pathetic situation indeed, as described by the Diplomat. Nobody in power should allow the situation to reach this far without taking appropriate steps to address it properly if the government is to survive. At this point, the Prime Minister of Lesotho had no option, but to seek for assistance. His Army Leadership was in disarray, the army, and the entire security system for that matter, was confused and dysfunctional. He had to look somewhere, and where was that? The only solution and place left for him was to contact his counter-parts at SADC for assistance. He ultimately sought the much needed help, as specified under the SADC Protocols on Politics, Defence, and Security Cooperation.

September 16 1998, is the day the Prime Minister, Pakalitha Mosisili, made the first of several appeals to South Africa, and Southern African Development Community (SADC), for military assistance stating that an army coup was imminent. The Prime Minister based his argument on the SADC mandate of the TROIKA Agreement of 1994 that allowed the three SADC countries of Botswana, South Africa, and Zimbabwe to oversee peace efforts in Lesotho. The Agreement had already been brought into play under the Langa Commission to look at the disputed electoral fraud by opposition members, so it was only proper for the Prime Minister to invoke the same Troika agreement for his own survival.³⁶

This was also in the spirit of The United Nations Charter, Pacific Settlement of Disputes under Chapter VI, and SADC Protocols on Politics, Defence, and Security Cooperation, which says in its Article 2, objective 2(a), to protect the people and safeguard the development of the region against instability arising from the breakdown of law and order, intra-state conflict, inter-state conflict and aggression.³⁷

However, on the 17 September, the protestors in Lesotho closed down government offices in the Capital, Maseru, after an independent international commission expressed serious concern about the May's general election. The commission's report said there had been serious irregularities in the poll, but did not call for a re-run. The Chairman of an opposition alliance, Vincent Malebo, said the Prime Minister should resign and call new elections. In Maseru, armed soldiers looked on as demonstrators surrounded government offices, the country's only brewery and its main flourmill, and prevented workers from entering the plants. Part of the Lesotho High Court was burnt down, and protestors ordered Judges to vacate court rooms.³⁸

Then on Monday, 21 September, the South African government announced that it had cancelled until further notice all efforts to mediate in the political crisis paralyzing the Mountain Kingdom of Lesotho. Despite intense diplomatic efforts by South Africa, planned talks between the Government and opposition have failed to take place.³⁹

The BBC's Greg Barrow, reporting from Lesotho, says Foreign Diplomats were saying they could no longer see any way out of the current impasse. Meanwhile, the South African Safety and Security Minister, Sydney Mafumadi met Prime Minister Pakalitha Mosisili and his Cabinet Ministers on Sunday, but refused to comment on the talks.⁴⁰

At this stage, it must be noted that everything possible was done to try and solve the crisis by whatever peaceful means available, but all efforts had failed.

What was left now was for SADC to act in accordance with its Protocols to protect one of its democratically elected governments from crumbling under forces of tyranny. Under SADC Protocols, Article 11.2(b), Conflict Prevention, Management and Resolution, the Organ may seek to resolve any significant intra-state conflict within a signatory. 'A significant intra-state conflict' shall include: large-scale violence between sections of the population or between the state and sections of the population, including genocide, ethnic cleansing and gross violation of human rights; a military coup or other threat to the legitimate authority of a state; a condition of civil war or insurgency; and a conflict which threatens peace and security in the Region or in another member state.⁴¹

All the above stated conditions were present in the Lesotho situation, and therefore, warranted SADC to move and avert a possible disaster to one of its Member State.

The methods employed are covered under subsection 3(a), the methods employed by the Organ to prevent, manage and resolve conflict by peaceful means shall include preventative diplomacy and adjudication by an international tribunal. It must be noted that this were tried by both the South African Defence Minister when he tried and failed to broker peace between the two warring parties, and the Langa Commission on its findings.⁴²

Subsection 3(c) provides that, where peaceful means of resolving a conflict are unsuccessful, the Chairperson of the Organ, acting on the advice of the Plenary Ministerial Committee, may recommend to the Summit that enforcement action be taken against one or more of the disputant parties. In case of Lesotho, the SADC Chairperson at the time was South Africa, and it is not really clear who the Plenary Committee for peace process members were, but despite that, the three Troika countries of Botswana, South Africa, and Zimbabwe took initiative. It must be noted further that the enforcement action according to subsection 3(d), can only be done as a last resort and, in accordance with Article 53 of the United Nations Charter. All these were tried and failed in case of Lesotho situation.⁴³

According to Subsection 4(a) on procedures, on both inter- and intra-state conflict, the Organ will seek to obtain the consent of the disputant parties to its peacemaking efforts. But in the present case, it was not necessary for the Organ to seek consent as the constitutionally

elected government took the initiative to invite SADC to its rescue under Subsection 4(c) which reads thus, 'any Signatory may request the Chairperson of the Organ to table any significant conflict for discussion in the Organ. In consultation with other members of the Troika, the Chairperson shall meet such request expeditiously. It further goes on to say under 4(d), that the Organ shall respond to a request by a Signatory to mediate in conflict within the territory of the State. The Organ shall endeavor by diplomatic means to obtain such request where it is not forthcoming. We already know in this case that there was an invitation.⁴⁴

So, when all this efforts failed to bring the desired results, the SADC forces of Botswana and South Africa entered Lesotho on the 22 September, 1998, at the invitation of the Government of Lesotho, and acting under the purported authority of the SADC Troika Agreement.⁴⁵ During the intervention, about fifty two (52) members of the rebel forces were arrested and disarmed. They were detained awaiting the country's military justice to take effect. On the other hand, the stability was brought back to the country after weeks of unrest.⁴⁶

THE SADC INTERVENTION FORCES OF BOTSWANA AND SOUTH AFRICA

Of the three Troika countries of Botswana, South Africa, and Zimbabwe, only the first two sent forces into Lesotho. Zimbabwe did not, citing its engagement in the Democratic Republic of Congo as a curtailing reason. The other one million dollar question was whether the intervening forces had the mandate from their respective countries to go into Lesotho?

SOUTH AFRICA

The post South African Defence Policy at the international level says, 'the objectives of South Africa's security policy include: the defence of the sovereignty, territorial integrity and political independence of the South African state; the promotion of regional security, and that is the Southern Africa region.⁴⁷

The Constitution outlines a clear hierarchy of authority on defence matters. While the President is the Commander-in- Chief, whereas the Chief of the South African National Defence Force enjoys executive military command of the Armed forces. This command is exercised under the direction of the Minister of Defence in times of peace and under the President during a state of national defence. The Minister is, in turn, accountable to Parliament and Cabinet for the South African National Defence Forces (SANDF). Parliament has a range of significant powers regarding military affairs in order to assert democratic control over the Armed Forces and defence policy. It has legislative powers; it approves the defence budget, and reviews the President's decisions to deploy the SANDF.⁴⁸ The S.A. Defence Policy further provides that the South African National Defence Forces should be ready to deploy out of the country. It

recognizes the fact that the government might be called upon by neighboring countries to play a number of supportive roles.⁴⁹ At the same time, situations may arise in Southern Africa where inter- or intra-state conflict poses a threat to peace and stability in the region as a whole. If political efforts to resolve the conflict are unsuccessful, it may become necessary to deploy the SANDF in multi-national peace support operations.⁵⁰ This was the case in Lesotho, after peace efforts failed, it was necessary to deploy peace enforcement forces to bring the situation under control.

The South African Constitution gives the civilian oversight of the National Defence force under Section 201, Political Responsibility; (1) A member of the Cabinet must be responsible for defence; (2) Only the President, as head of the national executive, may authorize the employment of the defence force- (b) in defence of the Republic; or (c) in fulfillment of an international obligation.⁵¹

(3) When the defence force is employed for any purpose mentioned in subsection (2), the President must inform Parliament, promptly and in appropriate detail, of- (a) the reasons for the employment of the defence; (b) any place where the force is being employed; (c) the number of people involved; and (d) the period for which the force is expected to be employed. If Parliament does not sit during the first seven days after the force has been deployed, the President must provide the information required in subsection (3) to the appropriate oversight committee.⁵²

Section 202 gives command of the Defence Force. It states under subsection (1) The President as head of the national executive is Commander-in-Chief of the defence force, and must appoint the Military Command of the defence force. (2) Command of the defence force must be exercised in accordance with the direction of the Cabinet member responsible for defence, under the authority of the President.⁵³

BOTSWANA

The Constitution of Botswana; Part III, Section 48(1) states that, the supreme command of the armed forces of the Republic shall vest in the President and he shall hold the office of Commander-in-Chief. Whereas Subsection (2) says, the powers conferred on the President by subsection (1) of this section shall include- (a) the power to determine the operational use of the armed forces; (b) the power to appoint members of the armed forces, to make appointments on promotion to any office in the armed forces and to dismiss any member of the armed forces.⁵⁴

Subsection (3) The President may, by directions in writing and subject to such conditions as he may think fit, delegate to any member of the armed forces any of the powers mentioned in subsection (2) of this section.

However, Parliament may regulate the exercise of the powers conferred by or under this section.⁵⁵

Section 5 of the Botswana Defence Force Act provides that, The Defence Force shall be charged with the defence of Botswana and with such other duties as may from time to time be determined by the President. While Section 6 further says, 'the President may at any time order that the whole or any part of the Defence Force shall be employed out of or beyond Botswana.'⁵⁶

The Constitutions of the two Troika member states who intervened in Lesotho allow both Presidents to deploy their defence forces beyond the borders of their countries in support of other SADC member states. So, there is no question of lack of mandate here; the intervening forces were properly deployed in Lesotho, especially looking at the fact that they were invited by the government in power to come and assist it in accordance with SADC Protocols already discussed above.

CONCLUSION

To conclude, when the tiny mountain Kingdom of Lesotho was engulfed by political upheavals in 1994 following that country's general elections, the Southern African Development Community (SADC) Leaders took it upon themselves to bring stability to that country. SADC Leaders appointed three member states of Botswana, South Africa, and Zimbabwe to broker peace in Lesotho.

The agreement negotiated by these countries between the Prime Minister of Lesotho and the King was known as the Troika Agreement and the three member states involved in the peace effort referred to as Troika countries. The three countries were later joined by Mozambique and Namibia. This has been the case to this day.

So when in 1998 the new political disturbances broke out, SADC did not look far for help, it referred the matter to the already known Troika countries to resolve. This norm has been accepted by the Basotho people, including the opposition political parties. It did not come as a surprise when the disgruntled members of the opposition appealed to SADC for assistance when they felt that the ruling party had rigged the elections of 1998.

SADC responded by instituting a commission, known as the Judge Langa Commission, to look into the opposition grievances. The product brought out by the commission however, did not go down well with the opposition parties and they started rioting. The ruling party, realizing

that the situation was out of hand, and beyond their control, also took the same route by appealing to SADC for help. Basically, both parties realized and accepted that they could get help from the Southern African Development Community.

SADC responded to the Prime Minister's call by sending in envoys to try and broker peace as usual, but this time, it was to no avail. Political stability in Lesotho, including lives were at stake, and SADC had to act in accordance with its standing principles.

When the Prime Minister of Lesotho requested for assistance, SADC looked at the situation and found it to have indeed gone out of hand, there was no reason why it should not sent in the intervening force in September of 98 to normalize the situation. This in a nutshell, gives the picture of the intervention and the legitimacy that has been questioned in some quarters. That the SADC forces entered Lesotho, albeit at the behest of government, to normalize the situation so that the political process can take its course, has no question.

LESSONS LEARNED.

What lessons are learnt from this case study?

Politically, the Southern African Development Community (SADC), like its sister organ in West Africa, ECOWAS, it has shown that now it is ready, if not willing, to take decision that affect the stability of the Subregion. However, it remains to be seen if this will be the trend to be followed by SADC. On the other hand, the Organ needs to do its business in a transparent manner to enhance the legitimacy of its operations. It is also upon SADC to make sure that it deals with its members on equal basis; there should be no big brother against smaller states, and not the other way round.

Operationally, SADC still has a lot to cover in developing its forces to world standards. Most of SADC forces are not trained in joint-war operations. When the SADC forces intervened in Lesotho on 22 September 1998, it became evident that the operation had a lot of short comings, and chief amongst those were; intelligence, lack of coordination, and poor planning.

It is hoped that with the recent SADC's commissioning of the early warning system, this will improve the intelligence sector in the region, and provide some meaningful information amongst member States that has been lacking all along. It is a well come development indeed in the region.

INTELLIGENCE

For any combat operation to be successful there must be sound intelligence provided to the Operational Commanders coming from intelligence sources on the operational area. The Joint intelligence should be provided at all levels command levels once the objectives, nature,

and scope of military operations have been determined by the Joint Task force. The SADC forces that moved into Lesotho were not sure of the level of resistance they would encounter, and entered the country prepared for a best-case scenario. They also did not exactly know where these rebel forces were, whether they had support from their fellow soldiers in Lesotho.

PLANNING

When planning for a Joint operation of this magnitude, there must be detailed planning on the concepts of operations. Joint operation plans must be developed in conformity with the criteria of adequacy, feasibility, acceptability, and compliance with joint doctrine. Before entering Lesotho, South Africa and Botswana should have rattled more sabers, and if they then decided that intervention was unavoidable, they should have gone in with enough force to keep casualties to a minimum and prevent the widespread rioting that followed and destroyed the Maseru city center.

Those responsible for planning the operation should have known that you can not enter a foreign country with a small force of 800 soldiers and expect to get away with it. The planners should have known that the Lesotho Defence Force was at the time Leaderless and therefore in disarray.

COORDINATION

Coordination in a joint military operation is of paramount importance, and for the operation to succeed, it must be given its highest regard. In this operation, coordination was bungled due to poor intelligence and impatience on the part of coalition forces; Inexperience on the part of intervening troops played a crucial factor as they did not exactly know what to do when and where.

The problem was further compounded by Leaderless Lesotho Defence Force who could not coordinate from inside with the intervening forces as to where the rebel forces were. It was all confusion between the SADC forces and The Lesotho Defence Forces, some of whom didn't know what was happening in their country.

Critics of the operation still believed that had the coordination between the Botswana troops and their South African counterparts been up to scratch, the casualties on both sides would have been avoided, if not minimized, and that the burning of the towns would have not taken place.

POST MILITARY OPERATIONS

Knowing when to terminate military operations and how to preserve achieved advantages is a component of strategy and operational art. Military operations typically will conclude with the attainment of the strategic ends for which the political authority had committed forces. These goals will be military strategic goals that, once achieved, allow transition to other instruments of national power and agencies as the means to achieve broader goals. The SADC forces that moved into Lesotho to quell the unrest and purported mutiny by juniors' officers were not properly trained on these operations. They did not immediately know what to do once they took objectives, or how to deal with the civilian population who took advantage of the chaotic situation to loot and burn down the Capital City.

There was also poor communication with the civil police about the intervention as they could have helped with civilian control, and probably some of the ugly incidents witnessed would have not happened.

Ultimately, what was planned to be a short operation ended up taking almost the whole year. It was not until October 1999 that the last SADC intervention forces left Lesotho, giving way to Operation Malutu, which would then deal with the restructuring and training of the Lesotho Defence Forces (Post Conflict Operations).

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